ALTS
Association for Local Telecommunications Services

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JAN 30 1997
Federal Communications Commission
Office of Secretary

January 30, 1997

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M St., N.W.
Washington, D.C. 20054

Re: Access Charge Reform; CC Docket No. 96-262

Dear Mr. Caton:

ALTS respectfully requests that the enclosed comments be accepted for filing one date late. ALTS miscalculated the time needed to deliver this document, and arrived at the Secretary's office after 5:30 on January 29, 1997. Acceptance of these comments one day late will not prejudice any private party because ALTS offered in advance to share its comments with all interested parties on the day of filing, an offer accepted by twenty various ILECs, IXCs, and other interested entities. ALTS apologizes for its error, and respectfully asks that its filing be accepted.

Yours truly,

Richard J. Metzger

cc: all parties on service list

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JAN 3 0 1997

Federal Communications Commission
Office of Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review For Local Exchange Carriers	)	CC Docket No. 94-1
	)	
Transport Rate Structure and Pricing	)	CC Docket No. 91-213
	)	
Usage of the Public Switched Network by Information Service and Internet Access Providers	)	CC Docket No. 96-263

COMMENTS OF THE ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

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January 29, 1997

SUMMARY

The impressive batting average established by the Commission in the Local Competition Order and Universal Service NPRM proceedings took a beating when the Commission stepped up to the plate in the present Access Charge Reform NPRM docket. Under the so-called market-based deregulation scenario, the Access Charge Reform NPRM proposes to virtually eliminate regulation of access charges of incumbent local exchange carriers ("ILECs") based on the belief -- never supported or questioned anywhere in the NPRM -- that effective access competition already exists, or is just around the corner. The blunt fact is that new entrants currently have less than 3% of the total interstate and intrastate access market.[1] While new entrants certainly hope to increase that percentage, the size and speed of their success cannot be predicted without first knowing the outcome of the pending Expanded Interconnection proceedings, or the ultimate application of the interconnection rules promulgated in the Local Competition Order.[2] However, Expanded Interconnection remains uncompleted

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[1] Table 1 of the Access Charge Reform NPRM indicates that total 1995 interstate and intrastate access charge revenue is $30.7 billion for Class A ILECs. The 1997 Annual Report on Local Telecommunications Competition (New Paradigm Resources Group, Inc. and Connecticut Research, 8th Ed. 1997) reports that year-end 1996 total competitive access charges revenues were $890 million (at 27). Assuming ILEC access revenues grew 6% by year-end 1996, this means CLECs have only 2.7% of the total access market by revenue, and less than one percent of the total telecommunications market. If ILEC switched access represents 80% of total ILEC access revenues, CLEC switched access revenues of $282 million are barely 1 percent of that amount.

[2] Recent press reports also suggest that facilities-based (continued...)

almost ten years after its start (see the timeline of Expanded Interconnection events appended as Attachment A), and the authority of the Local Competition Order's interconnection rules is uncertain in light of the Eighth Circuit's pending review proceeding.

While some of these problems may be outside the Commission's authority, the market-based deregulation approach proposed in the Access Charge Reform NPRM is fully within its control. But, unfortunately, the NPRM has the ILEC deregulation cart way, way ahead of the CLEC horse because it proposes to remove ILEC access regulation long before complete removal of access entry barriers for new entrants. And bad deregulation is indeed far worse than bad regulation.

The market-based approach also suffers from fatal defects in not insisting upon quantitative market share measurements in its Phase 1 (or in any other phase). And it fails to properly sequence ILEC access deregulation. Two examples leap from the page. First, the Access Charge Reform NPRM proposes that special access services be "immediately removed from price cap regulation" (at ¶ 107), although elsewhere the Commission relies on SWB's representation that dedicated transport costs five times as much in non-urban areas than in more dense locations (at

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[2](...continued) access competitors are a more significant near-term source of competition than resellers. See Wall Street Journal, "Big Carriers Are Slow to Enter Local Markets," January 28, 1997, at B-1.

¶ 114). Obviously, if the cost structure of special access is actually so skewed, immediate removal of special access from price cap regulation based on the existence of substantial competition cannot possibly be justified. A second example is the proposal that ICB and contract authority be granted to the ILECs in Phase 1 without any finding of substantial competition, even though the Price Cap Second FNPRM and the Interexchange Order required substantial competition prior to granting that level of deregulation -- requiring a 55% market share in the case of AT&T.

The Access Charge Reform NPRM's prescriptive approach to access charge reform is similarly unavailing. ALTS would be the first organization to applaud a flash-cut in access prices which was driven by effective access competition. But it makes no sense to artificially reduce ILEC access margins -- and thus retard market entry by new entrants -- before the remaining significant regulatory barriers to effective competition have been removed. The Access Charge Reform NPRM's claim that the prescriptive approach would help "develop" access competition is thus pure "voodoo regulation."

Concerning the rate structure proposals, ALTS generally supports the Commission's proposal to move ILEC rate structures closer to cost because this will enhance competition for rate elements that have previously been underpriced, such as tandem transport and switching.

Finally, ALTS shows there is no need for any regulation of new entrants. The "multi-bottleneck" referenced in the Access Charge Reform NPRM is unsupported in fact or economic theory. The central fact in any competitive market is that repeated attempts to exploit temporary market power -- and ALTS insists that no such power exists as to competitive terminating access -- are doomed to failure, and do not require regulatory intervention.

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COMMENTS OF THE ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

Pursuant to the Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry released December 24, 1996, in the above dockets ("Access Charge Reform NPRM"), the Association for Local Telecommunications Services ("ALTS") hereby comments on the Commission's proposed reform of its current regulation of interstate access charges.[3]

I. THE COMMISSION'S MARKET-BASED PROPOSAL FOR REFORMING ACCESS CHARGES IS FATALLY FLAWED.

Driving the interstate access charges of incumbent local exchange carriers ("ILECs") down to competitive cost levels through effective competition in access markets is a great idea, at least in theory, from the viewpoint of ALTS and its members.

[3] ALTS is the national trade association of more than thirty facilities-based providers of competitive access and local telecommunications services.

The reason for ALTS' enthusiasm is simple. The facilities-based competitive members of ALTS share an important and central goal in all their business plans: penetrating existing access markets as quickly and effectively as they can, thereby moving rates closer and closer to true competitive levels. ALTS' members are thus dedicated to the same ultimate goal as the Commission's market-based approach: letting competition, rather than regulation, determine the level of access charges.

But effectively reforming a regulatory regime through market forces requires much more than a simple declaration of open competition. Indeed, the Commission has had considerable hands-on experience with such initiatives in: (1) the deregulation of long-distance markets; (2) the elimination of dominant carrier status for AT&T; and (3) the deregulation of customer premises equipment ("CPE") and inside wiring. These experiences demonstrate there are fundamental principles that govern market-based deregulatory approaches.

A. Market-Based Deregulation Must Conform To Three Basic Principles.

Replacing regulation with market forces only makes sense if the following three fundamental considerations are fully implemented:

(1) **All Essential Pro-Competitive Regulatory Initiatives Must Be Identified and Completed**. Any market-based approach to access charge reform must insure that all the regulatory requirements needed for effective competition in access markets

are either already in place, or else are firmly scheduled to be implemented prior to, or contemporaneously with, ILEC access deregulation. The Commission, at a minimum, must first ascertain the "cause and effect" relationship that exists between these regulatory barriers and the creation of effective competition in various access markets, and then assure itself that all regulatory initiatives having an appreciable effect on access competition are being implemented on a known schedule, and that everything reasonable is being done to expedite that implementation. Indeed, the Access Charge Reform NPRM expressly recognizes this fact (at ¶ 144): " ... if barriers to competition are not eliminated, a market-based approach to access reform likely would not work."

(2) **Quantitative Market Measurements Must Be Employed**. A market-based approach to deregulation must link any proposed changes in ILEC access regulation with the emergence of effective competition in access markets. The only sound basis for concluding that regulation can be replaced with competition is a factual, quantitative determination that competition has reached a level of effectiveness where it functions better than regulation in setting prices, controlling entry and exit, fostering product innovation, etc. The key role played by the extent of competition in such an approach thus mandates that the Commission utilize accurate quantitative measurements of the extent of access competition in each relevant access submarket (see, e.g., the Commission's the phased-in removal of dominant

carrier regulation for AT&T as its market share declined in various markets).[4]

(3) <u>**There Must Be a Logical Sequencing of ILEC Access Deregulation in Each Phase of a Market-Based Approach**</u>. A phased-in implementation of a market-based approach requires the Commission to select carefully the particular changes in incumbent regulation that will be made in each phase. <u>If</u> the Commission elects to start phasing-in some changes in ILEC access regulation <u>before</u> incumbents are required to complete fully their own pro-competitive tasks (such as number portability, Section 251 interconnection agreements, Section 271 compliance, etc.), then the changes in incumbent regulation most desired by the ILECs must be placed in the <u>final</u> phase to assure the ILECs finish their job. Furthermore, any changes that would allow anti-competitive behavior by incumbents (such as ICB and contract authority) should only be allowed after the phase-ins are completed, and at a point at which the level of competition is sufficient to insure competition could survive and defeat any anti-competitive efforts.

B. The <u>Access Charge Reform NPRM</u>'s Proposed Market-Based <u>Approach Flunks All Three of the Above Principles</u>.

Unfortunately, the Commission's proposed market-based approach fails all three of the above principles.

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[4] <u>See</u> <u>Revisions to Price Cap Rules for AT&T Corp</u>., 10 FCC Rcd 3009, 3015 (1995)(relying on reductions in AT&T's share of commercial services market to 39%-54% level).

1. The Commission Must First Remove Existing Barriers to Access Competition Before Commencing Any Appreciable Reform of ILEC Access Charge Regulation.

In order to prevent fundamental structural distortions, it would be necessary for the Commission to remove all appreciable regulatory barriers to competition in access markets even if there were already significant competition in those markets. But the blunt fact is that new entrants currently have less than 3% of the total interstate and intrastate access markets.[5] Plainly, the task before the Commission should be the swift removal of remaining regulatory barriers, not the elimination of ILEC access regulation.

There are three kinds of regulatory barriers that require removal in access markets: (1) ILEC control over bottleneck facilities (currently at issue in the Expanded Interconnection proceedings, and the Local Competition order); (2) legal requirements inconsistent with the Telecommunications Act of 1996 imposed by state or local governments; and (3) competitive barriers to effective competition outside the control of the ILECs (most notably local government, building owners and utilities). Unfortunately, none of these critical tasks are even close to completion.

Expanded Interconnection - It has been almost ten years since TCG and MFS first asked the Commission to implement

[5] See n.1, supra.

expanded interconnection arrangements (see Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, n.7). Yet the Commission has not yet completed either its Phase I or Phase II investigations of the ILECs' special and switched Expanded Interconnection tariffs (see Local Competition at ¶ 558, n. 1358: "Our review of the LECs' initial physical and virtual collocation tariffs raised significant concerns regarding the implementation of our Expanded Interconnection requirements and resulted in the designation of numerous issues for investigation. The Commission has not yet reached decision on most of these issues, though it has found that certain rates for virtual collocation were unlawful" (emphasis supplied).[6] And other significant related issues remain unresolved. For example, competitive local exchange companies ("CLECs") are still prevented from purchasing the ILECs' term and volume discounted offerings, and ALTS and MCI's appeal of SWB's FOIA request concerning its Expanded Interconnection cost support has been pending for over two years!

While the Commission cannot fully control its own schedule, and the passage of the Telecommunications Act certainly imposed unprecedented demands on its resources, the inescapable fact remains that Expanded Interconnection has not been completed, thereby retarding the development of effective access

[6] See also In the Matter of Southwestern Bell Telephone Company, Transmittal No. 2524, released January 24, 1997, designating supplemental Phase II issues for investigation and creating a schedule for direct case, oppositions, and rebuttal.

competition. Any suggestion of appreciable deregulation of ILEC access charges would be irresponsible until this, and the other proceedings discussed below, have been completed.

There is no question that Expanded Interconnection is critical to the creation of effective access competition (In the Matter of Expanded Interconnection with Local Telephone Company Facilities, 9 FCC Rcd 5154, 5155 (1994); emphasis supplied): "Our decisions mandating expanded interconnection and collocation are fundamental to opening the interstate special access and switched transport markets to greater competition." Indeed, ALTS pleaded with the Commission to cure just a few of the outstanding Expanded Interconnection issues in its Local Competition proceeding (letter dated April 26, 1996). These include:

- Immediate reissuance of the Commission's "physical collocation" rules.

- Immediate adoption of the portions of the virtual collocation rules not included in the Commission's Virtual Collocation order on remand out of the concern they resembled "physical collocation," such as:

  - The requirement that ILECs offer a "$1 leaseback" arrangement for interconnector designated equipment ("IDE"); and,

  - Rules allowing interconnector-competitors to use non-ILEC personnel to install, maintain and repair virtual collocation equipment at their option.

- Preliminary refunds, with interest, of identified overcharges.

- Resolution of ALTS' motion for expedited discovery of US West's reports to DOJ concerning its compliance with the antidiscrimination provisions of the MFJ in connection with its new services, including virtual collocation.[7] (Section 251(j) of the 1996 Act transfers enforcement responsibility over the substantive requirements of the MFJ to the Commission until such time as the Commission expressly supersedes those requirements.)

None of these requests were addressed in the Local Competition order.[8]

Interconnection Rules - There is little need to belabor the critical function of the interconnection rules established in the Local Competition order. The Commission found it "critical ... to establish among the states a common, pro-competition understanding of the pricing standards for interconnection and unbundled elements [and] resale ..." (at ¶ 618). However, the Eighth Circuit has stayed the effectiveness of the Commission's pricing rules, thereby making it uncertain whether they will ever take effect.

Whatever the ultimate outcome of the current dispute over the Commission's ability to adopt mandatory pricing standards,

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[7] These documents exist because US West violated the anti-discrimination provisions of the MFJ, was required to pay a $10,000,000 fine, and was forced to put into place and fully document specific business processes which would detect any future attempt at discrimination against services used by US West's competitors, including the virtual collocation services at issue in the Phase II Order, and to report these analyses to the United States Department of Justice.

[8] See Local Competition at ¶ 566: "We believe that, in light of the expedited statutory time frame for this rulemaking and limited record addressing the specific terms and conditions for collocations under section 251 in this proceeding, it would be impractical and imprudent to develop a large number of new substantive collocation requirements in this order."

the uncertain current situation creates significant issues for new access entrants, particularly those that have not already completed satisfactory interconnection agreements. As the Commission knows, new entrants may enter access competition first, but the speed and scale of their entry turns heavily on the prognosis for their ultimate entry into local services. Even if the Eighth Circuit's decision on the merits has no effect on the portions of the Local Competition order dealing directly with access competition -- and there is no basis for making such an assumption at the present -- the obvious and substantial contingency hanging over adjacent markets is a significant barrier that must be cured prior to any appreciable relaxation of ILEC access regulation.

Section 271 Compliance - The Telecommunications Act of 1996 does not require the Commission to carry out reform of ILEC access charge regulation, but the Access Charge Reform NPRM concludes that various: " ... fundamental changes in the structure and dynamics of the telecommunications industry wrought by the 1996 Act now necessitate that the Commission review existing access charge regulations to ensure that they are compatible with the 1996 Act's far-reaching changes" (at ¶ 5). Among the factors cited by the Commission is the "competitive checklist" imposed by Congress to insure effective local competition prior to RBOC entry into in-region interLATA service.

The Commission is clearly correct as to its inherent discretion to reform ILEC access regulation, and as to Section 271 as a source of authority as well as direction for the Commission for certain of the elements needed for market-based deregulation of ILEC access charges.

However, as shown by the discussion supra of the incomplete Expanded Interconnection proceedings, and the discussion infra of other access market entry barriers, the Section 271 checklist is not an exhaustive list of the barriers that require removal prior to ILEC access charge deregulation. In any event, no RBOC or ILEC has yet demonstrated full Section 271 compliance. Indeed, only one Section 271 application has even been filed, and ALTS has filed a motion to dismiss that application for its failure to state even a colorable claim of compliance.[9]

"Fresh Look" - Access competition will never be fully successful if customers are penalized when they consider using competitive carriers. This can happen if the ILECs have signed long term contracts with customers that contain significant penalties for early termination. There is evidence that in anticipation of emerging competition, the incumbent LECs have been aggressively pursuing long term contracts with their customers.[10]

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[9] See ALTS Motion to Dismiss filed January 14, 1997, in CC Docket No. 97-1.

[10] See Telecommunications Reports, September 23, 1996, at 11, quoting the Vice President of marketing of SBC Communications Corp., as seeking long-term contracts with large customers as a (continued...)

In the original Expanded Interconnection proceedings, the Commission decided to limit the charges an incumbent local exchange carrier could impose on customers terminating a long-term arrangement to an amount that would place the customer and the incumbent local exchange carrier in the same position they would have been in had the customer originally chosen a shorter term arrangement. The "fresh look" option was limited to customers with contracts of at least three years, and entered into prior to the adoption of the initial Expanded Interconnection Order.

Given the long delay in fully implementing Expanded Interconnection, the Commission should renew its "fresh look" period in order to insure its original goal of enabling effective access competition has not been impaired by the long delay in implementation.

Other Significant Entry Barriers - Significant entry barriers to effective access competition are hardly limited to the matters currently before the Commission in the above proceedings. The Commission is well aware that despite the provisions of Section 253 of the 1996 Act, which sought to

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[10](...continued) means of preparing for competition; Indiana Utility Regulatory Commission, Cause No. 40612, wherein the Indiana Commission has commenced a proceeding to investigate whether Ameritech's raising of the rates for short-term Centrex service (while leaving untouched the rates for long-term service) is a barrier to competition at the local level; See also Comments of Intermedia Communications, Inc. in CC Dkt 96-98, at 15 (filed May 16, 1996).

eliminate all state and local barriers to entry, CLECs attempting to enter many markets are being thwarted by policies and rules that either specifically or effectively prohibit their entry. The Commission has ruled on at least two petitions for preemption (See Classic Telephone, Inc., CCBPol 96-10 (1996), application for review pending, No. 96-1498 (D.C. Cir. 1996); New England Public Communications Council, Memorandum Opinion and Order, FCC 96-470 (1996)), and has several others pending. A year after passage of the Act there are still statutes on the books that prohibit outright the provision of service by any company other than the ILEC, unless the ILEC consents. See Wyoming Stat. § 37-15-20.

More prevalent than statutes that discriminate against competitors of the ILECs are local rules and regulations that severely disadvantage or prohibit service by new entrants. It is clear that many municipalities see the new entrants as a substantial source of income for them (see National League of Cities, The Telecommunications Act of 1996: What it Means to Local Governments (1996)) and thus attempt to negotiate high "franchise" fees or "rental rates" for use of the public rights of way. These municipalities often do not seek similar fees from the incumbents. Therefore, in seeking to provide service in many municipalities the CLEC is presented with the option of either suing the municipality for discrimination (which causes, at best, extreme hard feelings with local officials with whom the company would like to do business; see, e.g., GST Tucson Lightwave, Inc.

v. City of Tucson, No. CV 96-326 T-JMR (1996)), paying a fee that its competitor (who has 100 percent of the market) does not pay, or else giving up. Obviously these are not options with which any business person would want to be faced. Until these types of situations are no longer the norm, competitive provision of access services will remain sporadic and a small percentage of the overall market.

There are also severe restraints on the provision of competitive access services caused by private parties. There are many times that service cannot practically be provided unless a competitive access provider has access to existing poles, ducts and conduits of other carriers and utilities. That is precisely why Congress amended the pole attachment provisions of the Communications Act to ensure that new competitors have such access. However, the ease with which CLECs have been able to negotiate pole attachments with utilities has not increased significantly since the passage of the Act and, in fact, a number of utilities are challenging those portions of the Act in federal court. See Gulf Power v. United States, Civ. No. 3:96 CV 381/LAC (N.D. Fla. 1996).

Finally, the Commission must be cognizant of the difficulties that competitive access providers have in obtaining access to private buildings. ALTS recognizes that the 1996 Act did not give competitive access providers specific rights to privately owned buildings. At the same time, it is clear that the difficulties that competitive providers have in getting to potential customers when a building owner refuses access is going to have a substantial effect upon the carriers' ability to provide service.

Universal Service and Separations Implementation - If and when the regulatory barriers to competitive access entry were fully removed, it would still be necessary to coordinate the phase-in of any ILEC access deregulation with the implementation of the new universal service fund and proposed separations changes. It makes no sense for the Commission to attempt to craft fundamental changes in ILEC access charge regulation **before** it can even assess the implications of such changes in light of these fundamental factors. It is obvious that issues such as combined interstate and intrastate revenue funding of a universal service fund versus strictly interstate funding, could have significant implications for access reform, as would the scope of any separations changes. Instead of trying to speculate about these effects, the Commission should pause until they are reasonably well known and can be properly incorporated in any access charge reform plan.

2. The So-called Market-Based Approach Substitutes Assumptions about Effective Competition for Actual Measurements.

Perhaps the most conspicuous omission in the Commission's proposed market-based approach is its utter nonchalance as to the need for accurate measurements of actual access competition in

Phase 1, or in any other phase of its proposal, for that matter.[11]

But the "other factors" are far less determinative of effective competition than market share, given the ILECs' control over bottleneck facilities. It wouldn't make sense for firefighters to pull up in front of a flaming building, and proceed to ask bystanders whether various "other factors" suggest the existence of a roaring conflagration. The Access Charge Reform NPRM's market-based approach commits exactly the same error by proposing to rely on such "other factors" and regulatory changes as a surrogate for the direct measurement of actual effective competition.[12]

With all due respect, the Access Charge Reform NPRM simply has its logic upside-down on this point. It wouldn't matter if the ILECs could summon up the ghost of Theodore Vail to testify they had removed all regulatory barriers to effective competition. The only bearing that removal of regulatory barriers has on ILEC access deregulation is whether it actually

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11 Access Charge Reform NPRM at ¶ 158: "While we do not propose to ignore market share data in assessing the level of competition for incumbent LEC services, we propose to consider market share in conjunction with other factors, including, but not necessarily limited to, supply and demand elasticities and pricing trends."

12 Access Charge Reform NPRM at ¶ 140): "This [market-based] approach could be implemented incrementally, first eliminating certain regulatory constraints as incumbent price cap LECs demonstrate through credible, verifiable evidence that the conditions necessary for efficient local competition to develop in their service areas exist."

results in effective competition, and the only way to assess the existence of effective competition is to measure it.[13]

The Access Charge Reform NPRM's reliance on the Price Cap Second FNPRM to support its disregard for market data is unavailing, since the issue there was whether AT&T's approximately 50% market share -- combined with its lack of any control over bottleneck facilities -- was "incompatible" with a highly competitive market, and "hence, does not by itself demonstrate that a firm possess market power" (at ¶ 142). Here the issue is whether firms with over 97% market share and control over bottleneck facilities could lack effective control over the access markets. In this context, the role of actual competitive market share must be paramount.

In addition to proposing no concrete competitive analysis in Phase 1 of its market-based proposal, the Access Charge NPRM refuses to acknowledge the compelling need for quantitative analysis of market share in Phase 2 (at ¶ 203):

> "As we observed in the Price Cap Second FNPRM, we previously have used market share as one factor in measuring the

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[13] The conceptual confusion of the Access Charge Reform NPRM on this point may have its origins in the current debate over the role of metrics in Section 271 applications, where RBOCs claim, based on their interpretation of the legislative history, that in-region interLATA does not require any particular level of competition (see Ameritech's Brief in CC Docket No. 97-1 at 46-47). But even if the RBOCs were correct in their interpretation of Section 271 (and they are not correct for the reasons discussed in ALTS' December 13th letter to the Department of Justice concerning Section 271), that argument has no bearing on the Commission's consideration of ILEC access charge reform.

> presence of competition. Nevertheless, there are drawbacks to using market share. An analysis of the level of competition for incumbent LEC services based solely on an incumbent LEC's market share at one time may not provide an adequate basis for us to conclude that a competitive presence truly exists. Further, we lack data on the relative market shares of incumbent LECs and their rivals, and thus would need to develop reasonable and nonburdensome ways to gather that information if we were to rely on it." (Footnotes omitted; emphasis supplied.)

The first point here is that market share may not be adequate to demonstrate the existence of a competitive market, but it is entirely adequate to demonstrate the absence of a competitive market, given the admitted continued existence of ILEC control over bottleneck facilities. ALTS is unaware of any economic literature or theory which holds to the contrary.

The second point is that the Commission has already recognized the importance and feasibility of gathering market information in Local Competition Data Collection, CCB-AID 95-110, released November 3, 1995, which is still pending. While that proposal failed to link the requested information properly to pertinent Commission tasks, and suffered from an unduly granular approach, the Commission clearly recognized there that this kind of information could be collected and used on a regular basis.

3. The Proposed Sequencing of ILEC Access Deregulation Is Anti-Competitive and Fails to Incent ILEC Compliance With Remaining Regulation.

The proper sequencing of ILEC access deregulation in any market approach is quite important. As Congress recognized in Section 271, ILECs need an incentive to remove barriers and